

ORIGINAL

BEFORE THE

## Federal Communications Commission

WASHINGTON, D.C.

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APR 27 1998FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Amendment of Section 73.202(b) )  
Table of Allotments )  
FM Broadcast Station )  
(Johnstown and Altamont, New York) )

MM Docket No. 98-31  
RM-9227

To: Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

**COMMENTS IN SUPPORT OF NOTICE OF PROPOSED RULEMAKING**

Hometown Broadcasting Corp. ("Hometown"), licensee of FM radio broadcast station WSRD, Johnstown, New York ("WSRD"), and by its attorneys, hereby comments on the Commission's Notice of Proposed Rule Making ("Notice") to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, to reallocate Channel 285A from Johnstown, New York to Altamont, New York.

**PRELIMINARY STATEMENT**

1. Hometown filed a Petition for Rule Making on February 2, 1998 ("Petition"), requesting that the Commission amend its FM Table of Allotments to reallocate Channel 285A from Johnstown to Altamont, New York as that community's first local service, and to modify WSRD's license accordingly to specify Altamont as its community of license.

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2. On March 6, 1998, the Commission released its Notice in the above-referenced matter, proposing to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Altamont, New York	--	285A
Johnstown, New York	285A	--

The Commission noted that reallocating Channel 285A to Altamont would provide that community with its first local transmission service, triggering a higher priority than if the station remained in Johnstown, which is also served by WIZR(AM) as a local transmission service. The Commission also determined the station could be reallocated to Altamont in full compliance with the Commission's minimum distance separation requirements. In its Notice, the Commission requested further information as to the "overall public interest benefits that would accrue from the reallocation," based on the Commission's determination that certain areas would lose some service as a result of the reallocation.

3. The analytical framework used by the Commission in determining the areas that would lose service as a result of the WSRD reallocation does not accurately reflect the number of broadcast services that will continue to be available to the public. In addition, the Commission's loss study is flawed, as there are discrepancies within the Notice as to how the WSRD coverage area should be determined. In any event, the overall public interest benefits to Altamont and the additional gain in the number of people served clearly outweigh any loss that may occur with the reallocation of WSRD. Therefore, the Commission should amend the FM Table of Allotments to allot Channel 285A from Johnstown to Altamont, New York, and should modify the license for WSRD(FM) to specify operation on Channel 285A in Altamont.

## ARGUMENT

### I. Hometown Reiterates its Declaration of Intent

4. As Hometown noted in its Petition, if the proposal to reallocate Channel 285A from Johnstown, New York to Altamont, New York is granted, Hometown will promptly file the appropriate application for Channel 285A at Altamont, New York, and if authorized, will promptly construct the facilities contemplated therein.

### II. The Commission's Loss Study is Materially Deficient and Must be Disregarded

5. As noted, because Hometown's Petition would necessitate a move of the WSRD transmitter site, Hometown filed an analysis of the gain areas in Altamont and the loss areas in Johnstown that would result from the relocation. Hometown's study showed that the loss areas in and around Johnstown would continue to be served by at least five or more aural services. If a loss area continues to be served by at least five aural services, the Commission will not consider it to be underserved. See, e.g., Canovanas, Puerto Rico, MM Docket No. 91-259 (released July 2, 1997); Family Broadcasting Group, 53 RR 2d 662 (Rev. Bd. 1983).

#### A The Failure of The Commission to Include Daytime-Only AM Stations In its Loss Study is Arbitrary

6. The Commission's findings differed from Hometown, inasmuch as the Commission found there would be areas left with less than five aural services if WSRD were reallocated to Altamont. To support its findings, the Commission states that for purposes of determining an aural "service," the Commission includes any construction permits for unbuilt stations and modified permits for licensed facilities, but totally excludes daytime-only AM services. The Commission offers no explanation why it uses daytime AM services in one situation (calculating local transmission services), and rejects their importance in another

(determining the number of services in a loss area). It is, at best, counterintuitive, and at its worst arbitrary and capricious, to disregard a station that is on the air while counting a station that is not even operational.

7. Daytime-only AM stations are already providing on-air service to the public. There is no indication that unbuilt facilities will ever be constructed and licensed. While the Commission has not accepted applications for new daytime-only AM stations since 1987, see Unlimited-Time Operation by Existing AM Daytime-Only Radio Broadcast Stations, 2 FCC Rcd 3145 (1987) ("Daytime-Only Operation"), the daytime-only AM stations that continue to operate provide unique localized service to their respective communities. Because most daytime stations operate from at least 6 a.m. to 6 p.m., not counting pre-sunrise and post-sunset operation, these AM stations are on the air for nearly 75% of the time when most people listen to the radio. In fact, in many areas, the daytime AM station may be the only outlet able to provide a community with local news or weather and traffic emergencies during those hours when the information is needed most. The Commission has also authorized daytime stations to operate at a reduced power at nighttime, further increasing the scope and importance of their service. Daytime-Only Operation, 2 FCC Rcd 3145. For example, Hometown currently operates WIZR, its AM station in Johnstown, New York, at nighttime at a power of 28 watts, allowing Hometown to provide local coverage to both Johnstown and the nearby community of Gloversville.

8. The Commission has already recognized the importance of a daytime-only AM service, as it considers these stations to be a local transmission service for purposes of the Commission's FM allotment priorities. Rose Hill and Trenton, North Carolina, 10 FCC Rcd 6611 (1995). Therefore, the Commission has determined that these daytime stations do serve a local need. Because people rely on daytime-only service just as much as they do on full-time AM

and FM aural service, and because these stations provide an outlet otherwise unavailable to the community, there is no reason why the Commission should completely ignore the existence and importance of daytime AM stations in calculating loss areas in an FM station reallocation proceeding.

9. When the daytime AM services are properly included in an analysis of the WSRD loss area, no area would be undeserved. As shown in Hometown's Petition, Johnstown and the surrounding loss areas would continue to receive at least five broadcast voices. Because the reallocation of WSRD results in an overall net gain in service, with no offsetting cognizable loss, there is no question that Hometown's proposal fully serves the public interest. Therefore, the FM Table of Allotments should be amended accordingly.

B. The Commission Failed to Use the Correct WSRD Facilities in its Loss Study

10. Even if daytime-only AM stations may properly be excluded from the Commission's gain/loss study, its analysis of the WSRD loss area appears questionable. Under the Commission's analytical framework for a gain/loss study, it will use the maximum facilities for the station operating omnidirectionally. See Harrisburg and Albermale, North Carolina, 11 FCC Rcd 2511 (1996). The maximum facilities for WSRD is at 6 kW ERP with a nondirectional antenna at a height above average terrain ("HAAT") of 100 meters.

11. While the Commission claims in Footnote 2 of the Notice that it used WSRD's maximum facilities, it goes on to state in Footnote 3 that it also conducted a gain/loss study using the actual WSRD facilities. The Commission, however, incorrectly describes these facilities. It states that Hometown operates WSRD with a directional antenna. However, WSRD actually uses a nondirectional antenna at 6 kW ERP and 91 meters HAAT. Therefore, because of this

apparent confusion by the Commission in the WSRD facilities, doubt is raised as to the overall results obtained by the Commission.

12. In any event, the Commission has already held that even if loss areas do exist, a reallocation will still be granted if the majority of the loss area is served by at least four reception services. See Wray and Otis, Colorado, DA 98-215, MM Docket No. 97-117 (released February 6, 1998); see also Homestead and North Miami Beach, Florida, 10 FCC Rcd 13,149 (1995). Even under the Commission's questionable "worst case" analysis, a majority of the loss area will continue to be served by 4 or more services. Because of the gain that would result from the WSRD relocation, Hometown's request complies with the Commission allotment priorities and is consistent with past Commission precedent.

III. The Public Interest Benefits Resulting from Hometown's Proposal Outweigh any Loss in Reception Areas that May Occur

13. Even assuming that the Commission's gain/loss study is valid, the substantial public benefits that would accrue to Altamont outweigh any loss that may be experienced in the Johnstown area. Hometown has used WIZR and WSRD to promote many fund-raising activities for local organizations, such as the YMCA, hospitals, nursing homes, and even helped construct and maintain a Little League Field. Hometown was able to raise over \$40 million for the St. Jude's Hospital. Hometown intends to establish itself as a significant presence in the Altamont community through the reallocation of WSRD, while WIZR will remain a strong voice in Johnstown. Hometown will build upon WSRD's reputation as a people-oriented station if reallocated to Altamont. It will continue conducting charitable activities for St. Jude's, and also intends to commence fund-raising activities for Altamont organizations, including local senior

citizens groups, youth organizations, and the Ferrano House, which provides care for babies born with cocaine crack addictions and AIDS.

14. Hometown also broadcasts a variety of professional, amateur and local sporting events, averaging at least 50 different local high school events a year. It has also brought over 100 professional athletes to the area for charity events and for meetings with local schools. It expects to conduct the same types of activities in Altamont if WSRD's channel were reallocated.

15. Hometown has met with the Mayor of Altamont to help in the possible transition of WSRD as the first broadcast voice serving the Altamont community. If reallocated, Hometown intends to conduct a public poll to determine what type of programming format would best serve the Altamont community. It will conduct surveys to determine what WSRD could do to improve its public service. In addition, Hometown intends to establish a summer internship program for the Altamont youth, and expects to hire at least 15 people from the Altamont community.

16. As shown, Hometown intends to operate WSRD in a manner that best serves the Altamont community. Therefore the public interest will be served if WSRD were relocated to Altamont as that community's first local broadcast service.

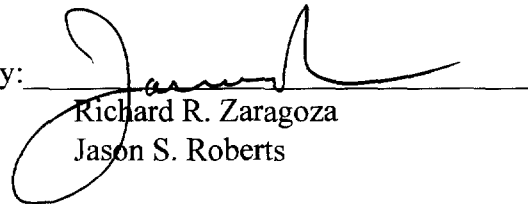
**CONCLUSION**

For the foregoing reasons, Hometown Broadcasting Corp. respectfully requests that the Commission reallocate Channel 285A from Johnstown, New York to Altamont, New York and modify the license of radio station WSRD(FM) accordingly.

Respectfully submitted,

**HOMETOWN BROADCASTING CORP.**

By: \_\_\_\_\_



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